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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/528,209

03/16/2005

Elaine Stephen

8830-328US1 (208102)

4545

23973

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03/21/2008

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EXAMINER

THOMAS, ALEXANDER S

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

03/21/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/528,209	<b>Applicant(s)</b> STEPHEN, ELAINE	
	<b>Examiner</b> Alexander Thomas	<b>Art Unit</b> 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-18, 20, 21 and 23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-10, 12-18, 20, 21 and 23 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 1, 3-5, 7-10, 12-16 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yeager et al 6,435,931 in view of Nadeau 2,275,983. Applicant's arguments have been considered but are not deemed persuasive. Applicant argues that "Yeager et al is fundamentally incompatible with the modification to include a harness, a releasable attachment or a pivotable attachment" because of the disclosure therein at column 1, lines 19-38 and 53-54 which teaches away from the use of these devices. The examiner acknowledges that column 1, lines 19-38 and 53-54 discloses the disadvantages of the use of harnesses, etc. However, one of ordinary skill in the art would easily recognize that if one could tolerate the disadvantages of releasable attachment devices, i.e. pinching, etc. it would be obvious to use such devices on the product of Yeager et al in place of the handles 28. This is clear in view of the teaching in Nadeau wherein the equivalence of handles and harnesses is taught, the harness being used for baby and the handle to be used by a larger child; see page 1, right column, lines 7-11. Clearly, if one of ordinary skill in the art wanted to include babies along with larger children in the use of the Yeager et al product he would provide the product with releasable harnesses in view of the teaching in Nadeau. Concerning the Declaration of Ford, this declaration has been considered but is not deemed persuasive of patentability. The declarant states that in his opinion the two references Yeager et al

and Nadeau can not be combined because they are fundamentally incompatible.

However, the references are clearly combinable in view of the fact that they come from the same art area, namely that of devices that guide children during walking, both disclose devices that include handles that allow children to grip the devices, and one would have a reasonable expectation of success from the combination. Concerning the Declaration of Stephan, this declaration has been considered but is not deemed persuasive of patentability. Applicant argues that the awards and press articles they have received are evidence of commercial success and therefor, nonobviousness.

However, no sales data has been provided to support a showing of *commercial* success. In any event, there is no evidence that the products that received the awards are commensurate in scope with the invention as set forth in the instant claims.

3. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yeager et al 6,435,931 in view of Nadeau 2,275,983 as applied to claims 1, 3-5, 7-16 and 18 above, and further in view of either Nero 3,563,208, Tonuzi 6,422,176 or Deveanux 6,047,665. Nero, Tonuzi and Deveanux each disclose a guide device for walking children comprising handles on both sides that extend laterally from a central spine. It would have been obvious to one of ordinary skill in the art to provide lateral extensions from both sides of the spine in the Yeager et al product in view of the teachings in Nero, Tonuzi or Deveanux to allow for the guiding of more individuals.

4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Yaeger et al 6,435,931 in view of Nadeau 2,275,983 as applied to claims 1-5, 7-16, 18 and 22 above, and further in view of Nero 3,563,208. Applicant's arguments have been

considered but are not deemed persuasive for the reasons of record and for the reasons set forth above in paragraph 2.

5. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yaeger et al 6,435,931 in view of Nadeau 2,275,983 as applied to claims 1-5, 7-16, 18 and 22 above, and further in view of Gandelman 4,321,734. Applicant's arguments have been considered but are not deemed persuasive for the reasons of record and for the reasons set forth above in paragraph 2. Concerning the Declaration of Ford, this declaration has been considered but is not deemed persuasive of patentability for the same reasons as set forth above in paragraph 2. Concerning the discussion of Grandelman in the declaration, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Grandelman is pertinent to the particular problem because it discloses a particular releasable fastener.

#### ***Allowable Subject Matter***

6. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Thomas whose telephone number is 571-272-1502. The examiner can normally be reached on 6:30-4:00 M-THUR.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1794

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Alexander Thomas/  
Primary Examiner  
Art Unit 1794